Fodness, Inc. and United Construction Workers, Local No. 84, Christian Labor Association of the United States of America. Case 18–CA–11827

February 12, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

Upon a charge and first amended charge filed by the Union, United Construction Workers, Local No. 84, Christian Labor Association of the United States of America on July 10 and August 14, 1991, respectively, the General Counsel of the National Labor Relations Board issued a complaint against Fodness, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On January 13, 1992, the General Counsel filed a Motion for Summary Judgment and memorandum in support. On January 15, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from the service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Respondent was required to file an answer by December 19, 1991. When no answer was received, the Regional attorney, by letter dated December 23, 1991, gave the Respondent a second opportunity to file an answer stating that unless an answer was received by December 31, 1991, a Motion for Summary Judgment would be filed. The Respondent did not file an answer or otherwise respond.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Minnesota corporation with an office and place of business in New Ulm, Minnesota, has been a heating and air conditioning contractor in the building and construction industry engaged in the installation, maintenance, and repair of heating and air conditioning equipment where during the calendar year ending December 31, 1990, it purchased and received products, goods and materials valued in excess of $50,000 directly from points outside the State of Minnesota. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time employees at its New Ulm, Minnesota facility; excluding office clerical employees, guards and supervisors as defined in the Act.

The Union and the Respondent have been signatories to a series of successive collective-bargaining agreements, the most recent of which, other than the contract effective from May 1, 1991, through April 30, 1992, was effective by its terms until April 30, 1991.

Under the principles established in *John Deklewa & Sons*, 282 NLRB 1375 (1987), enfd. 843 F.2d 770 (3d Cir. 1988), cert. denied 488 U.S. 889 (1988), the Union has been, and is, the limited exclusive representative for the employees in the unit for purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

(a) Since on or about May 17, 1991, the Union and the Respondent reached a full and complete agreement with respect to terms and conditions of employment of the unit to be incorporated in a collective-bargaining agreement.

(b) Since on or about May 17, 1991, the Union has requested that Respondent execute a written collective-bargaining agreement containing the agreement described above.

(c) From on or about May 17, 1991, until on or about October 7, 1991, and then only in partial compliance with the settlement agreement described below, the Respondent failed and refused to execute the collective-bargaining agreement.

(d) On September 6, 1991, the Respondent entered into an informal settlement agreement which was joined by the Union and approved by the Regional Director on October 7, 1991. Notwithstanding numerous requests for compliance, the Respondent breached and failed to comply with substantial terms of the Agreement. On December 4, 1991, the Regional Director issued an order revoking approval of and vacating and setting aside settlement agreement and reissued the complaint and notice of hearing.

CONCLUSIONS OF LAW

By failing to sign and observe the contractual terms and conditions of employment set forth above, the Respondent has unlawfully failed and refused, and is failing and refusing, to bargain in good faith with the Union as the representative of its employees, in violation of Section 8(a)(1) and (5) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

ORDER

The National Labor Relations Board orders that the Respondent, Fodness, Inc., New Ulm, Minnesota, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to execute the collective-bargaining agreement with the Union that was agreed to on May 7, 1991, and covers employees of the Respondent in the following unit:

> All full-time employees at its New Ulm, Minnesota facility; excluding office clerical employees, guards, and supervisors as defined in the Act.

(b) Failing and refusing to give effect to the terms and provisions of the agreed-on collective-bargaining agreement with the Union.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Sign the collective-bargaining agreement containing the terms and conditions of employment which were agreed on May 7, 1991, give retroactive effect to the terms and conditions of that collective-bargaining agreement, and make the employees whole for losses, if any, which they have suffered as a result of the refusal to sign and honor the collective-bargaining agreement, with interest. Backpay is to be computed as set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), plus interest accrued to the date of payment as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and state laws.

(b) Preserve, and on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its facility in New Ulm, Minnesota, copies of the attached notice marked "Appendix."[1] Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

---

[1] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to execute the collective-bargaining agreement with the Union that was agreed to on May 7, 1991, and covers employees in the following unit:

All full-time employees at our New Ulm, Minnesota facility; excluding office clerical employees, guards, and supervisors as defined in the Act.

WE WILL NOT fail and refuse to give effect to the terms and provisions of the agreed-on collective-bargaining agreement with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce any of you in the exercise of the rights which are protected by Section 7 of the Act.

WE WILL sign the collective-bargaining agreement containing the terms and conditions of employment to which we agreed on May 7, 1991, give retroactive effect to the terms and conditions of the collective-bargaining agreement, and make our employees whole for losses, if any, which they have suffered as a result of our refusal to sign and honor the collective-bargaining agreement.

FODNESS, INC.